United Nations S/AC.44/2004/(02)/137

Security Council

Distr.: General
14 March 2007

Original: English

Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Tuvalu to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) and, in reference to the note verbale from the latter dated 2 November 2006 concerning the Tuvalu report, it has the honour to submit the report of the Government of Tuvalu on the actions it has taken to implement the said resolution (see annex).

07-27295 (E) 260307

Annex to the note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee

Report of Tuvalu on actions taken by the Government to implement Security Council resolution 1540 (2004)

Introduction

Pursuant to United Nations Security Council resolution 1540 (2004), States are required, within six months from the adoption of the resolution, to present a report to the 1540 Committee of the Council on the steps they have taken or intended to take to implement the resolution.

Accordingly, this report sets out the policy, legislation and operational mechanisms operating in Tuvalu to implement the requirements of Security Council resolution 1540.

Operative requirements of 1540

OP 1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

The Government of Tuvalu is committed to withholding any support whatsoever to entities — whether State or non-State actors — attempting to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons, and their means of delivery or related components.

In accordance with this policy, the Government of Tuvalu has adopted the following international conventions and arrangements relevant to Security Council resolution 1540:

The Government of Tuvalu deposited the Instruments of Ratification in respect of the Nuclear Non-Proliferation Treaty on 19 January 1979 and the Chemical Weapons Convention on 19 January 2004. It signed the Nuclear Weapons Free Zone Protocols (Treaty of Rarotonga) on 6 August 1985 and deposited an Instrument of Ratification on 16 January 1986.

The Government supports in principle the objectives of the remaining international conventions and arrangements relevant to Security Council resolution 1540 and is considering accession to these relative to its other international and domestic priorities.

OP 2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the forgoing activities, participate in them as an accomplice, assist or finance them.

The Government of Tuvalu considers there to be a low risk of nuclear, chemical or biological weapons, or delivery systems being present in, or being

successfully imported into, Tuvalu. Factors relevant to this assessment include the country's small size and remote geographical location, its small indigenous population and limited commercial air and sea links to countries, which have tightly controlled borders.

Currently, the primary legislation regulating the possession and use of weapons in Tuvalu are the Arms and Ammunition Ordinance (1964) and the Explosives Ordinance (1927). These ordinances restrict the manufacture, dealing in, possession and use of arms, ammunition and explosives to persons authorized by permit issued by the Commissioner of Police. The unauthorized involvement in these activities constitutes offences that are punishable by fines and imprisonment.

Currently, there is no legislation in Tuvalu specifically regulating and controlling the manufacture, acquisition, possession, development, transportation, transfer or use of nuclear, chemical or biological weapons, their means of delivery and related components.

As far as actual terrorist acts using nuclear, chemical or biological weapons are concerned, these are covered by Tuvalu's domestic law if they result in the death or serious injury of persons. The maximum penalty for the most serious of these offences is life imprisonment.

OP 3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

Currently, there is limited legislative coverage for this aspect of Security Council resolution 1540 in Tuvalu. The importation and use of agricultural fertilizers or pesticides into Tuvalu is regulated by the Pesticides Act and supervised by the Pesticides Committee. This Committee, comprised of officials from the Department of Agriculture, the Ministry of Health and other relevant agencies, considers applications, and sets conditions for the importation and use of fertilizers and pesticides. The Government seeks technical assistance in the development of an effective legislative framework for implementing these aspects of Security Council resolution 1540. It notes that the secretariat of the South Pacific Community is currently developing model legislation dealing with protection of the environment for possible use by countries in the Pacific region. It is expected that this will be completed before the end of 2007. Officials will assess whether elements of this model legislation can be used to implement any aspects of Security Council resolution 1540.

(b) Develop and maintain appropriate effective physical protection measures;

Currently, there is no legislative framework or supporting operational mechanisms in place in Tuvalu regulating the physical protection of nuclear, chemical and biological weapons, their means of delivery and related components.

The absence of legislative or operational controls reflects the Government's assessment of the current risk of such items being present in, or being imported into, the country.

The Government recognizes the need to develop, as soon as possible, policies, legislation and operational mechanisms implementing this aspect of Security Council resolution 1540. However, it will require significant external technical assistance to develop these frameworks.

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

The police, customs and immigration divisions work together closely on border security risks. The police has access to regional and international intelligence networks through its association with the Australian Federal Police and the Pacific Transnational Crime Coordination Centre (PTCCC) in Suva, Fiji. Customs is currently contributing to a regional customs intelligence network known as CAPERS. Currently, this occurs through fax or e-mail, but it is expected that Tuvalu's Customs Service will gain real time electronic access to the system in 2006 under a project funded by the New Zealand Government. The Immigration Service exchanges intelligence on immigration matters with the Pacific Immigration Directors Conference based in Suva, Fiji.

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal and civil penalties for violations of such export control laws and regulations;

The Customs Ordinance (1964) is the primary legislative mechanism controlling the movement of goods over Tuvalu's border. The Act contains a list of prohibited goods prescribed by the Prime Minister. The list includes firearms, ammunition and explosives. These items can only be imported under permits issued by the Government. In addition to the Customs Ordinance, the movement of these items is prohibited under the Arms and Ammunition Ordinance and Explosives Ordinance. However, this legislation does not encompass the wider range of nuclear, chemical, biological weapons, their means of delivery and related components.

The Government would welcome offers of technical assistance to develop a comprehensive framework addressing these aspects of Security Council resolution 1540, in particular through the development of legislation, and related operational capability.

Government agencies are developing security plans in place for its seaport and ships entering its territory. These plans, which are expected to be completed in 2007, will ensure Tuvalu complies with the International Convention for the Safety of Life at Sea and the new International Ship and Port Security Code.

At an operational level, if any goods were located by customs officials during routine searches of ships, aircraft and related cargo that were suspected of being related to terrorist activity, other relevant agencies would be notified, along with regional intelligence bodies such as the Pacific Transnational Crime Coordination Centre (PTCCC).

OP 5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons.

The Government of Tuvalu adopts a policy consistent with this aspect of Security Council resolution 1540.

OP 6. Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.

The Government has not established a national control list. Further work needs to be undertaken by Government officials, if possible with any available external technical assistance, to assess the viability of adopting this mechanism. The development, adoption and maintenance of such a list present a significant challenge for the Government.

OP 7. Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions.

The Government of Tuvalu would welcome any technical assistance that is available in assisting it to fully implement the requirements of resolution 1540.

OP 8. Calls upon all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, chemical and biological weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws.

OP 9. Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical and biological weapons, and their means of delivery.

OP 10. Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to

take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.

In relation to operative paragraphs 8, 9 and 10, the Government of Tuvalu supports, to the greatest extent possible, international initiatives to reduce the threat posed by the proliferation of nuclear, chemical and biological weapons, their means of delivery and related components. It will continue to participate and contribute to efforts (primarily in the Pacific region) to reduce this threat.